Commonwealth of Massachusetts

Supreme Judicial Court

Middlesex County

No. SJC - 12826

MARK S. TINSLEY

Plaintiff-Appellant

vs.

TOWN OF FRAMINGHAM et alia

Defendants-Appellees

Appeal from a Judgment and Order of the Superior Court
Sitting in Middlesex County

BRIEF OF AMICUS CURIAE MASSACHUSETTS MUNICIPAL LAWYERS ASSOCIATION

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ISSUE PRESENTED

1. Whether principles similar to those described in *Heck v. Humphrey*, 512 U.S. 477 (1994), apply to claims brought under State law and the Massachusetts Civil Rights Act (the "MCRA").

STATEMENT OF INTEREST OF AMICUS CURIAE

The Massachusetts Municipal Lawyers Association ("MMLA"), formerly known as the City Solicitors and Town Counsel Association, is the oldest and largest bar association dedicated to the practice of municipal law in the Commonwealth. Its members include attorneys and their assistants who represent municipal governments as city solicitor, town counsel, town attorney, or corporation counsel. Members of the MMLA also include attorneys who represent or advise cities, towns, and other governmental agencies in other capacities. MMLA's mission is to promote better local government through the advancement of municipal law.

MMLA regards the application of *Heck* principles to claims brought under state law and the MCRA as a vital

tool for municipalities forced to defend their law enforcement officers against civil claims arising out of incidents that result in criminal convictions.

While the plaintiff argues that *Heck* should be narrowly construed and limited only to Section 1983 claims, (which, he argues, require a different showing of proof from those arising under the MCRA) MMLA urges a broader application of *Heck* principles to cases such as this one, and to state law claims and/or claims invoking the MCRA, generally. Such application would serve to prevent an impermissible collateral attack on the related conviction and promote finality and consistency, whether the attack is mounted under Section 1983 or the MCRA. It is the attack itself, and not how it is styled, that the *Heck* court addressed – and that is what is at issue here.

MMLA respectfully submits this amicus curiae brief to urge a ruling that applies *Heck* principles to the claims presented and further urges the court to provide a full explication as to the application of these principles to future claims.

STATEMENT OF THE CASE

The MMLA adopts the statement of the case and the statement of facts as set forth in the Town's brief.

ARGUMENT

I. DISCUSSION OF THE PRINCIPLES DESCRIBED IN *HECK V. HUMPHREY*.

Following his conviction in Indiana state court for voluntary manslaughter in the killing of his wife, Roy Heck filed a civil action in Federal Court under 42 U.S.C. § 1983 seeking money damages – not his release from custody – for what he claimed was "an unlawful, unreasonable and arbitrary investigation" leading to his arrest. *Heck v. Humphrey* 512 U.S. 477, 479 (1994). When the Seventh Circuit affirmed the dismissal of the action, finding that Heck was doing little more than "challenging the legality of his conviction"[1] the Supreme Court took up the question whether a state prisoner may challenge the constitutionality of his conviction in a suit for damages under 42 U.S.C. § 1983.

Piquing the court's interest in the matter, inter alia, was the question whether proof of the damages claim necessarily required proof of the invalidity of the underlying conviction. *Heck*, 512 U.S. at 481-482. If challenging the validity of the conviction, the

[1] *Heck v. Humphrey* 997 F.2d 355, 357 (7th Cir. 1993)

federal habeus corpus statute would be the route to relief. Heck, however, was only seeking money damages under Section 1983. The court explained that, while both statutes provided access to the federal courts for unconstitutional treatment at the hands of state officials, "they differ in their scope and operation." *Heck,* 512 U.S. at 480.

Addressing Heck's claim for damages, which necessarily focused the discussion on Section 1983,[2] the court concluded that Heck's claim was not "cognizable under § 1983 at all" (Id. at 483) finding:

> "[A] § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus, 28 U.S. C. § 2254. A claim for damages bearing that relationship to a conviction or sentence that has *not* been so invalidated is not cognizable under § 1983." Id. at 486-487.

Analyzing the issue, the court established the following test: If a judgment in favor of the plaintiff would "necessarily imply the invalidity of

[2] Where Heck did not seek "immediate or speedier release, but monetary damages" the court explained he could not achieve "fully effective relief through federal habeas corpus proceedings." *Heck,* 512 U.S. at 481.

his conviction or sentence … the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated." If, however, a favorable judgment "will *not* demonstrate the invalidity of any outstanding criminal judgment against the plaintiff, the action should be allowed to proceed, in the absence of some other bar to the suit." *Heck,* 512 U.S. at 487.

This requirement of favorable termination, the court explained, supports a "strong judicial policy against the creation of two conflicting resolutions arising out of the same or identical transactions." Id. at 484, citing S. Speiser, C. Krause, & A. Gans, American Law of Torts § 28:5, p. 24 (1991). This holding was consistent with long-expressed concerns for finality and consistency by the court, which "has generally declined to expand opportunities for collateral attack." Id. at 485. MMLA urges, discussed more fully below, application of that same rationale to state claims and those asserted under state law and the MCRA.

II. THE MASSACHUSETTS CIVIL RIGHTS ACT

General Law c. 12, Sections 11H and 11I, (the "MCRA") provides a State remedy for deprivations of civil rights that is broader in scope than Section 1983, its Federal counterpart. The Legislature enacted the MCRA to address actions by private individuals (not merely state actors), creating a remedy that "encompassed private action where otherwise 'State action' would be required." *Batchelder v. Allied Stores Corp.*, 393 Mass. 819, 821 (1985). As this court explained:

> "[w]e conclude that the Legislature intended to provide a remedy under G. L. c. 12, Section 11I, coextensive with 42 U.S.C. Section 1983 (Supp. V 1981), except that the Federal statute requires State action whereas its State counterpart does not. The language requiring interference 'by threats, intimidation or coercion, or attempt to interfere by threats, intimidation or coercion...' is addressed to this private action. G. L. c. 12, Section 11H, as amended by St. 1982, c. 634, Section 4." Id. at 822-823 (emphasis added).

The two are "coextensive" and not so distinct, as the appellant urges,[3] that Section 1983 principles may not be considered when reviewing issues arising under the MCRA. *Bell v. Mazza,* 394 Mass. 176, 181 (1985); *Redgrave v. Boston Symphony Orchestra, Inc.,* 399 Mass. 93, 98 (1987).

[3] *See*, Brief of Plaintiff-Appellant at p. 16.

Such a review occurred in 1989 when this court considered whether the MCRA allowed for immunity for discretionary functions. The court concluded it was "the intent of the Legislature in enacting the Civil Rights Act to adopt thereunder the standard of immunity for public officials developed under Section 1983." *Duarte v. Healy,* 405 Mass. 43, 46 (1989). The *Duarte* court relied on its holding in *Batchelder* that the MCRA and Section 1983 were to be treated as coextensive when explaining its conclusion.[4]

The *Duarte* court further noted: "We have had no occasion to consider whether it is appropriate under the Civil Rights Act to adopt all of the current Supreme Court precedent under Section 1983." Id. Here, the occasion presents in regard to the principles enunciated in *Heck.*

III. APPLICATION OF *HECK* PRINCIPLES IS APPROPRIATE TO THE STATE AND MCRA CLAIMS RAISED IN THIS ACTION.

A. The defenses provided by *Heck* are suitably applied to state law claims.

[4] The *Duarte* court acknowledged that when the MCRA was passed, "the Supreme Court already had interpreted Section 1983 to provide qualified immunity for discretionary functions." *Duarte,* 405 Mass. at 47 – thus presuming Legislative awareness of that interpretation at the time of enactment.

This court has long turned to Federal court decisions construing the provisions of Federal Acts where there are state law analogues. See, e.g., *Sena v. Commonwealth, et alia,* 417 Mass. 250, 255 (1994), citing *Harry Stoller & Co. v. Lowell*, 412 Mass. 139 , 142-143 (1992); *Pina v. Commonwealth*, 400 Mass. 408 , 414 (1987)(discussing the discretionary function exemption of G.L. c. 258, which the court noted "tracks the Federal Tort Claims Act).[5] See, also, *Howard v. Town of Burlington, et alia,* 399 Mass. 585, 589 (1987)(reviewing "scope of employment" question, court noted "G.L. c. 258 is modeled closely on the Federal Tort Claims Act").

The *Howard* court observed: "In construing Massachusetts statutes we are ordinarily guided by the construction given the parallel Federal statute by the Federal courts." citing *Vasys v. Metropolitan Dist. Comm'n*, 387 Mass. 51, 54 (1982); *Kelley v. Rossi*, 395 Mass. 659, 662 n.4 (1985).

[5] The *Sena* court went so far as to adopt a two-prong inquiry used by the United States Supreme Court in *Berkovitz v. United States*, 486 U.S. 531, 536 (1988) to determine whether certain conduct falls within the federal discretionary function exemption.

Thus, MMLA respectfully submits that this case presents the same opportunity for a parallel construction between state and federal civil rights laws. Where there is a history of viewing Section 1983 and the MCRA as coextensive analogues, MMLA offers that the defenses to Section 1983 embodied by the *Heck* rule should be equally available to defendants of civil claims under the MCRA.

B. Application of the *Heck* rule to state and MCRA claims would provide consistency and finality for municipal defendants.

As discussed in Section II, supra, the MCRA was intended to provide a remedy coextensive with the remedy provided under Federal law by means of 42 U.S.C. § 1983 for deprivations of secured rights. By submitting this Amicus, MMLA not only requests that where there are coextensive remedies, there be coextensive defenses, but also seeks that the principles of consistency and finality that are preserved by the *Heck* rule have similar applicability to the MCRA.

The question in this case is the same that the Supreme Court asked in *Heck*: are Tinsley's claims cognizable under the MCRA at all. *Heck*, 512 U.S. at 477. Given the historical similarities and analogous case law as discussed above, the answer here should echo the conclusions drawn in *Heck*. Specifically, if judgment in

favor of plaintiff for claims of civil rights violations implies the invalidity of a prior conviction, dismissal is required. See, *Heck*, 512 U.S. at 487. To allow such claims to proceed would undermine the finality of the criminal process and provide inconsistency between tribunals. Finality and consistency are bedrock principles upon which any decision is rendered. Id. at 484-85.

For MMLA, these principles of finality and consistency are of particular import for municipalities that must defend against state and MCRA claims based upon facts that have been conclusively determined in criminal proceedings. Application of the *Heck* rule to such claims would allow for the conservation of municipal resources by providing an appropriate defense, bringing swift closure to unnecessary litigation.

CONCLUSION

For the reasons stated above, MMLA submits that the principles in *Heck v. Humphrey*, 512 U.S. 477 (1994) are appropriately applied to claims brought under state law and the Massachusetts Civil Rights Act.

RESPECTFULLY SUBMITTED,

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CERTIFICATION of SERVICE

I, James S. Timmins, certify that I have caused an electronic copy of this brief to be served upon counsel of record for the each of the parties delivered via electronic mail to the addresses that appear on the docket of this court.

James S. Timmins

James S. Timmins

CERTIFICATION PURSUANT TO MASS. R. APP.P. 16(k)

I, James S. Timmins, certify that this brief complies with the provisions of the Massachusetts Rules of Appellate Procedure pertaining to the filing of briefs.

James S. Timmins

James S. Timmins